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HOUSE OF REPRESENTATIVES
AUSTIN

October 19, 1992

COMMITTEES:
ENERGY
REDISTRICTING
PUBLIC HEALTH,
CHAIRMAN

RQ-466

MBJ
file # ML-17711-92
IDA # 17711

The Honorable Dan Morales
Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711

October 19, 1992

Dear Sir:

As Chairman of the House Public Health Committee, I request an opinion be rendered on the five (5) high-lighted queries found on pages nine (9) and ten (10), on the attached pages to this letter.

I would appreciate your response on this matter as soon as possible. If you require any further information, please contact me at your earliest convenience at 463-0500.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tom Craddick".

Tom Craddick
Chairman
House Public Health Committee

Enclosures

Tracy A. Pounders

1630 High Pointe Lane • Cedar Hill, Texas 75104 • (214)293-8767

DATE: September 17, 1992

TO: Honorable Glen Repp
State Representative
215 E. Freeman, Suite 100 A
Duncanville, Texas 75116
Via Telecopier 296-9828

RE: One-Half Cent Sales Tax: Reduction in Property Taxes

Dear Glen:

Thank you for your help on the sales tax referendum question. With an Attorney General opinion on this matter, Cedar Hill will be in a much better position to make a decision regarding the opportunities the additional sales taxes provide.

These are the additional questions I mentioned over the phone today:

1. **May the Additional Municipal Sales Tax found in Tax Code §321.101(b) be used to finance a homestead exemption?**

Tax Code §321.101(b) provides an additional sales and use tax for the reduction of property taxes. The purpose of this tax is to reduce the tax burden on property owners. The use of a homestead exemption would reduce the tax burden on property owners. Additionally, a home rule city, such as Cedar Hill, usually may make its own determinations regarding property taxes, except where pre-empted by Constitution or statute. Applying this to the tax, Cedar Hill should have the authority to define what *property tax* is (i.e., if *property tax* can mean homestead exemption) unless otherwise defined by Constitution or statute.

2. **Assuming (1) a city is an eligible city for purposes of both Article 5190.6 §4A and §4B, and (2) the election to adopt a sales tax under each of these sections is held on the same day, if the city adopts a one-half cent sales tax per §4B, effective July 1, 1993, may it also adopt a combined one-half cent sales tax per §4A and Tax Code §321.101(b), effective October 1, 1993 (for a combined one cent sales tax)?**

Article 5190.6 §4B(f) provides that "After the effective date of the taxes imposed under this section, the adoption of a sales and use tax or the attempted adoption of a sales and use tax by the eligible city or any other taxing jurisdiction having territory in the city does not impair the taxes imposed under this section." Does "After the effective date of the taxes

imposed" mean that (1) the election for any other sales taxes must be held after the effective date of the tax, or (2) the effective date of the new tax must come after the effective date of the §4B tax?

3. May an eligible city adopt less than a one-half cent tax under Art. 5190.6 §4B?

Art. 5190.6 §4B(e) provides that "If an eligible city adopts the tax, a tax is imposed ... at a rate equal to one-half of one percent." §4A permits the adoption of a sales tax at one-eighth, one-quarter, three-eighths, and one-half of one percent. The Tax Code §321.101(b) sales tax may likewise be adopted at less than one-half of one percent.

4. May a combination of additional sales taxes under Art. 5190.6 §§4A & 4B, and Tax Code §321.101(b) be proposed for adoption on the same ballot as one ballot proposition?


Art. 5190.6 §4A(p) provides a procedure for adopting both the §4A and Tax Code §321.101(b) tax on the same ballot and as one ballot proposition. Although §4B does not provide specific authorization for such, there is no obvious prohibition either.

5. Are members of a municipality's advisory boards "officers" for purposes of Art. 5190.6 §4B(c).

Of the seven directors for the corporation created under §4B, four must be members of the city council, and three shall be persons who are not "employees, officers, or members of the governing body of the eligible city." An *officer* to me would mean City Manager, City Secretary, City Attorney, etc.. Many cities, however, include their advisory board members as "officers" for definitional purposes in their respective city charters and codes.

Again, thank you Glen for your help in this matter. If I can be of help to you in the future, please feel free to contact me. If you have questions on these questions or my previous memoranda, please feel free to call me at 214-670-3476 (work) or 214-293-8767 (home).

Sincerely yours,



TRACY POUNDERS